Picket Line

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A new year brings with it a new industrial relations system for many Australian workers. The Federal Government's long awaited reforms finally became law in December with the passage of the Industrial Relations Reform Act 1993. These are such important changes that I should begin Picket Line for 1994 with some comments about them.

The Act represents a major reshaping of federal industrial relations—probably the most fundamental change of emphasis since Australia's conciliation and arbitration system was introduced in 1904. The Government has not only changed the mechanics of Australia's industrial laws and processes but has also introduced entirely new objectives.

Facilitating agreements at workplace level

Where for most of this century the industrial system has had resolution of disputes by conciliation and arbitration as its basic objective, the new approach enshrines in law the aim of facilitating agreements between industrial parties at the workplace level. This will produce real change in the way industrial relations are conducted in Australian organisations. Only the extent of change is a matter for conjecture.

The Federal industrial relations system has always been extremely important in Australia, despite the restricted nature of constitutional industrial powers which prevented the Commonwealth government from directly legislating in a number of employment-related areas. An enormously significant aspect of the new arrangements is the use now for the first time of the corporations and external affairs powers to extend the potential span of federal industrial laws. This controversial step could give rise to several High Court challenges but there is little doubt that the net result will be a major increase in the coverage of Australian workers by federal employment laws. This will affect library and information employees every bit as much as other employment groups. In fact, given the number of ALIA members not presently covered by industrial awards, the profession may be one of those for which the reforms have greatest impact.

Important provisions concerning new Industrial Relations Court

Some of the most important provisions concern a new Industrial Relations Court, minimum employment conditions, enterprise bargaining and flexibility and sanctions against industrial action. The new *Industrial Relations Court of Australia* will have jurisdiction to enforce and interpret awards and agreements, issue orders concerning minimum standards and make determinations on unfair dismissals. Previously, the doctrine of separation of judicial and arbitral powers prevented the Industrial Relations Commission from interpreting awards or ordering reinstatement or damages for unfair dismissal.

The Act provides for *minimum standards* covering four main areas of employment. In all of them the Federal Government is legislating to give effect to international conventions to which it is a party. This relies on the Commonwealth's constitutional external affairs power and it is here that State Government challenges may occur. Under the provisions, the federal Industrial Relations Commission will be able to make orders setting *a minimum wage* for employees who have no access to compulsory arbitration. This will be most important for Victorian workers not covered by federal awards who will now be able to seek a minimum wage order, notwithstanding the Kennett State Government's abolition of awards and minimum rates in March last year.

The Commission will also be able to make orders to ensure that employees receive *equal pay for work of equal value*, as distinct from equal pay for *the same work*. In practice, the wording of the Act could require Commissioners to compare different jobs done by men and women to establish whether they are of equal value. The way in which the Commission applies this power will give us an indication of its usefulness for women in library and information work to argue for wage increases on the basis of relativity with other employment categories.

The Act provides new and wider protection in regard to *termination of employment*. These include fixed notice periods which must be given to all terminated employees—except in cases of serious misconduct—together with a long list of grounds which may not be used to terminate staff. While these provisions will not prevent employers from terminating their staff, they do impose considerable restrictions on how it must be done, even where valid reasons for dismissal exist. Because State Government provisions in this area may not meet the international standard, it is likely that there will be a strong shift of unfair dismissal cases to the new federal industrial relations court.

Parental leave provisions

The fourth area of minimum standards concerns *parental leave*. This provision will supplement rather than replace State and Territory entitlements. As such, it will remedy existing gaps in coverage so that all Australian workers will now have an entitlement.

The new system's centrepiece, however, is its focus on promotion of *enterprise bargaining*. Changes in this area are vast and in themselves could easily provide enough material for two or three *Picket Line* columns. They will be addressed in detail shortly in a further booklet in ALIA's *Enterprise Bargaining and Workplace Reform* series. In short, the reforms introduce the pursuit of workplace bargaining as a major objective of the industrial relations system. Three separate mechanisms—award flexibility clauses, certified agreements and enterprise flexibility agreements—are included to achieve that aim. How effective they are will depend to a large extent on how the parties (including, particularly, the Industrial Relations Commission itself) use them. So it will be some time before sensible judgements can be made. For the moment, it is probably fair to say that the opportunity for more flexible working arrangements has been presented. Time will tell whether it is taken.

Industrial action sanctions

The final major area of reform is that of *sanctions for industrial action*. In general terms, the effect of the new Act will be to reduce the options for employers to seek legal remedies against unions or employees engaged in industrial action. To date, this has been possible basically because most forms of industrial disputation have been illegal under common law industrial torts. The new proposals mean that no action will lie in tort for most strikes, bans or limitations. Together with restriction of application of secondary boycott provisions to industrial situations, this means many of the steps taken by employers in recent years under both civil and criminal law to combat industrial disputes will no longer be available.

The Industrial Relations Reform Act is by any standards a major event in the development of Australia's industrial relations law and systems. Specific changes go far beyond the brief overview I have been able to present here. But I hope this will give you a general feel for the direction in which we are now being taken. ALIA will be producing further information setting out the implications of the new system for its members. And I will be closely monitoring practical implementation of the new measures to gauge their impact. I expect to have more to say on the subject in forthcoming columns. In the meantime, I will be pleased to hear from any members wanting more information. ■